

United States Steel Corp. and Walter J. Bausch.
Case 4-CA-13690

27 February 1984

DECISION AND ORDER

**BY CHAIRMAN DOTSON AND MEMBERS
ZIMMERMAN AND HUNTER**

Upon a charge filed 28 April 1983 by Walter J. Bausch, an individual, the General Counsel of the National Labor Relations Board issued a complaint 23 June 1983 against United States Steel Corp., the Respondent, alleging that it has violated Section 8(a)(1) and (3) of the National Labor Relations Act.

The complaint alleges that the Respondent has continuously since on or about 1 August 1980 maintained a collective-bargaining agreement with the United Steelworkers of America, the Union, which includes a provision granting superseniority in layoff and rehire to the Union's financial secretary, who it is further alleged does not participate in either grievance processing or on-the-job contract administration. On 5 July 1983 the Respondent filed its answer admitting in part and denying in part the allegations in the complaint.

On 31 October 1983 the General Counsel filed a Motion for Summary Judgment. On 4 November 1983 the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent thereafter filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on the Motion for Summary Judgment

The Board recently reexamined the issue of superseniority for union officers in Gulton-Electro Voice.¹ Overruling prior Board decisions, the Board held in that case that grants of superseniority "extending beyond those employees responsible for grievance processing and on-the-job contract administration" were unlawful.²

The Respondent admits in its answer that it executed and maintains a collective-bargaining agreement with the Union which grants superseniority in layoff and rehire to the Union's financial secretary, and that the Union's financial secretary does not participate in either grievance processing or on-the-job contract administration. However, the Respondent contends that a violation under *Gulton*

should not be found in this case because its superseniority provision (1) has never been applied and therefore no employee has been adversely affected and (2) was executed before *Gulton* in reliance on then-prevailing Board decisions.³

We find both contentions without merit. The Board has previously held that the mere maintenance of an overly broad superseniority provision violates the Act.⁴ Further, while objecting broadly to *Gulton's* retroactive application, the Respondent has failed to demonstrate how that application would impose on it an unjust burden. We find, therefore, that by maintaining the superseniority clause with respect to the Union's financial secretary the Respondent has violated Section 8(a)(1) and (3) of the Act. Accordingly, we grant the Motion for Summary Judgment.

Jurisdiction

The Respondent is a Delaware corporation engaged in the manufacture of steel and related products. The Respondent's facility in Fairless Hills, Pennsylvania, is involved in this proceeding. During the past year the Respondent sold and shipped goods and materials valued in excess of \$50,000 from its Fairless Hills facility to points directly outside the Commonwealth of Pennsylvania. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

CONCLUSIONS OF LAW

By maintaining a provision in its collective-bargaining agreement with the Union according superseniority in layoff and rehire to the Union's financial secretary, the Respondent has engaged in, and is engaging in, an unfair labor practice within the meaning of Section 8(a)(1) and (3) and Section 2(6) and (7) of the Act.

THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

³ Respondent also argues that *Gulton* should not apply here because the Union's members ratified the collective-bargaining agreement containing the superseniority provision (and thereby waived their Sec. 7 rights). This argument, however, was fully considered and rejected in *Gulton* itself. *Gulton Electro-Voice*, supra at 409. See also *Allied Supermarkets*, 233 NLRB 535 fn. 1 (1977); *Dairylea Cooperative*, 219 NLRB 656, 659 (1975), enfd. sub nom. *NLRB v. Teamsters Local 338*, 531 F.2d 1162 (2d Cir. 1976).

⁴ *Preston Trucking Co.*, 236 NLRB 464, 465 (1978), enfd. 610 F.2d 991 (D.C. Cir. 1979); *Connecticut Limousine Service*, 235 NLRB 1350, 1352 (1978), enfd. as modified 600 F.2d 411 (2d Cir. 1979).

¹ 266 NLRB 406 (1983).

² Id. at 409. Accord: *Auto Workers Local 561*, 266 NLRB 952 (1983). Contrary to the Respondent's urging, we decline to reconsider our decision in *Gulton*.

We have found that the superseniority clause is unlawful and we therefore order that the Respondent cease and desist from maintaining or enforcing such clause in its collective-bargaining agreement with the Union, or in any like or related manner interfering with, restraining, or coercing its employees in the exercise of rights guaranteed by Section 7 of the Act.

ORDER

The National Labor Relations Board orders that the Respondent, United States Steel Corp., Fairless Hills, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Maintaining provisions in its collective-bargaining agreement which accord the Union's financial secretary superseniority.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Post at its facility in Fairless Hills, Pennsylvania, copies of the attached notice marked "Appendix."⁵ Copies of the notice, on forms provided by

⁵ If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT maintain any provision in our collective-bargaining agreement with the United Steelworkers of America giving the Union's financial secretary seniority preference with respect to layoff and rehire.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

UNITED STATES STEEL CORP.